



# From Bugger to Homosexual: The English sodomite as criminally deviant (1533-1967)

Jérôme Grosclaude

## ► To cite this version:

Jérôme Grosclaude. From Bugger to Homosexual: The English sodomite as criminally deviant (1533-1967). *Revue française de civilisation britannique*, 2014, XIX (1), pp.31-46. hal-01272782

**HAL Id: hal-01272782**

**<https://hal.uca.fr/hal-01272782>**

Submitted on 11 Feb 2016

**HAL** is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.



Distributed under a Creative Commons Attribution - NonCommercial| 4.0 International License

***From bugger to homosexual: the English sodomite as criminally deviant (1533-1967)<sup>1</sup>***

Dr Jérôme Grosclaude  
Senior Lecturer, Blaise-Pascal (Clermont-Ferrand II) University  
Agrége de l'Université

(EA 1087: *Espaces Humains et Interactions Culturelles*)

[James Bond] had put forward the proposition that, if MI5 and the Secret Service were to concern themselves seriously with the atom age 'intellectual spy', they must employ a certain number of intellectuals to counter them. (...) 'Retired officers of the Indian Army', Bond had pronounced, 'can't possibly understand the thought processes of a Burgess or a Maclean. (...) Once Burgess and Maclean went to Russia, the only way to make contact with them again (...) would have been to send their closest friends to Moscow and Prague and Budapest with orders to wait until one of these chaps crept out of the masonry and made contact. (...)'

'Oh really', [Captain] Troop had said with icy calm. 'So you suggest we should staff the organization with long-haired perverts. That's quite an original notion. I thought we were all agreed that homosexuals were about the worst security risk there is. I can't see the Americans handing over many atom secrets to a lot of pansies soaked in scent.' (Fleming, 2006: 130-131)

Captain Troop's reaction, as well as the fact that 'the other committee members had ranged themselves more or less with Troop' (Fleming, 2006: 131), is obviously a way for the author to give us an unflattering image of the bureaucrats of the MI6, contrasting sharply with James Bond's clear-sighted and down-to-earth approach. However, it is also a fitting example of the deviant character homosexuality has long assumed in British minds, and of the unreasonable fear that homosexuality and sodomy could (and maybe can still) arouse in British minds.

I mentioned homosexuality, but this paper is really about sodomy (or 'buggery' if one wants to use the proper legal term enshrined in the Buggery Act 1533) and not about homosexuality, although the two will necessarily overlap.

To begin with, homosexuality, that is to say 'a sexual propensity for one's own sex' (*Oxford English Dictionary*, 2002: vol. 7-345), has never been a criminal offence in the United Kingdom nor in any of its component nations, contrary to sodomy (that is, anal penetration by a man's penis) which was illegal in the United Kingdom from 1533 to the late XXth century. The reader will have understood that the most likely persons to commit such

---

<sup>1</sup> I wish to dedicate this article to my mother-in-law, Dr Dominique Badard MD, who has always supported me in my various endeavours.

acts would be men sexually drawn to other men, but one can note a few prosecutions for consensual heterosexual sodomy.

To understand further why this article will not be about homosexuality in itself, it should be understood that the notion of homosexuality as we know it was not formulated before the 1860s, and took time to be accepted by the general public. It was not until 1869 that the word 'homosexual' (as opposed to 'heterosexual') was first used by the Austro-Hungarian Károly Mária Kertbeny (the alias of Karl Maria Benkert) (Leroy-Forgeot, 1997: 5). Havelock Ellis was probably the first to use the word widely in English in the 1890s (Weeks, 1990: 3). Until maybe the XVIIIth century, and certainly no later than the late XIXth century, most people saw sodomy as the ultimate perversion but it was not conceived as precluding the sodomite from having (or wishing to have) sexual relations with women. Indeed, the modern idea that most people are exclusively sexually attracted either to men OR to women took time to become widespread. For all these reasons, to speak of 'homosexuality' before the end of the XIXth century would represent an anachronism.

The opening paragraph of this article mentioned a link between sodomy and treason. As a matter of fact, the image of the sodomite as a traitor (alleged or proven) was only one of the many stages through which 'buggers' have gone. From sinner (and thus offender against God) to mentally ill, these are the (sometimes concurrent) different stages through which sodomites have gone through in terms of public perception during the period studied in this article. These different categories, the reader will have gathered, all have a common point: a deviant character, linked to the danger allegedly posed by sodomy to society and the social fabric, for political and/or religious reasons – in the XVIth century, for example, 'the love of boys was seen as the most extreme act of sexual libertinism and, not untypically, was often associated with religious scepticism, and even republican politics as well' (Franceschina, 1997: 111) – and/or for medical reasons. If homosexuality (and homosexual acts) now generally enjoy a more positive social status in the British public eye, the notion of sodomy as a deviance is never far from the surface as witnessed by the recent debates around same-sex marriage. Professor Randolph Trumbach was never more justified than when he asserted in 1987 that '[t]he history of sodomy in the eighteenth century is not simply the history of repression. It encapsulates the history of all of society' (Trumbach, 1987: 109). Indeed, the same could be said for every century in the period covered in this chapter.

We can therefore ask the following question: To what extent have the different labels cast upon male homosexuals reflected the changing perceptions of the deviance they were

alleged to represent? The question will be answered by first outlining the **Religious and legal foundations of the condemnation of sodomy** before focusing on three different (broadly successive but sometimes overlapping) representations of male homosexuality in England and Wales: **the traitor; the perverted libertine; and the mentally ill.**

## **I. Religious and legal foundations of the condemnation of sodomy**

### **The sodomite as sinner: Biblical foundations**

Before engaging in the discussion of the stigmatization of sodomy in England, it is necessary to describe the religious bases of the condemnation of sodomy and of homosexuality.

A common and age-old basis for a Biblical, and thus Jewish and Christian, condemnation of sodomy is to be found at Leviticus 18, 22.29: ‘You shall not lie with a male as with a woman; it is an abomination. (...) For whoever commits any of these abominations shall be cut off from their people’.<sup>2</sup> The prohibition is repeated in a different form two chapters later, in Leviticus 20, 13, along with another, more precise, penalty to be imposed: ‘If a man lies with a male as with a woman, both of them have committed an abomination; they shall be put to death; their blood is upon them’.

To these prohibitions, Jewish, and later Christian, scholars also added the episode of Sodom and Gomorrah. One night, two angels come to stay at Lot’s (Abraham’s nephew) house, and ‘the men of the city, the men of Sodom, both young and old, all the people to the last man, surrounded the house; and they called to Lot, “Where are the men who came to you tonight? Bring them out to us, so that we may know them”’ (Genesis 19, 4-5). When Lot tries to protect his guests, he is ‘pressed hard’ by the men and is only saved by the supernatural intervention of the angels who then tell him to flee with his relatives, adding: ‘we are about to destroy this place, because the outcry against its people has become great before the LORD’ (Genesis 19, 12).

The wish of the men of Sodom to ‘know’ the strangers has usually been construed as meaning carnal knowledge. The logical conclusion to reach was then that Sodom was destroyed because its male inhabitants practised anal intercourse with each other, and that it was a particularly heinous crime in the eyes of God who had earlier remarked to Abraham:

---

<sup>2</sup> Except when otherwise stated, all the Biblical quotations included in this paper will be from the *New Revised Standard Version*, first published in 1989.

‘How great is the outcry against Sodom and Gomorrah and how very grave their sin’ (Genesis 18, 20).

This interpretation, combined with the Levitical condemnation I mentioned earlier, is the bulk of Biblical condemnation. To this could be added St Paul’s raging against ‘those who by their wickedness suppress the truth’ (Romans 1, 18), about whom he observes:

God gave them up to degrading passions. Their women exchanged natural intercourse for unnatural, and in the same way also the men, giving up natural intercourse with women, were consumed with passion for one another. (Romans 1, 26-27)

Elsewhere, the Apostle to the Gentiles includes sodomites among the ‘wrongdoers [who] will not inherit the kingdom of God’ (1 Corinthians 6, 9) and those whose acts are ‘contrary to the sound teaching that conforms to the glorious gospel of the blessed God’ (1 Timothy 1, 8-10).

On these biblical references, Christian tradition later built a philosophical condemnation of sodomy which would be expanded by several theologians, among which St Augustine of Hippo in his *Confessions*:

[O]ffenses against nature are everywhere and at all times to be held in detestation and should be punished. Such offenses, for example, were those of the Sodomites; and, even if all nations should commit them, they would all be judged guilty of the same crime by the divine law, which has not made men so that they should ever abuse one another in that way. For the fellowship that should be between God and us is violated whenever that nature of which he is the author is polluted by perverted lust. (Augustine of Hippo, 1955: 45)

Likewise, St Thomas Aquinas in his *Summa Theologica*, condemns ‘copulation with an undue sex, male with male, or female with female’ as ‘a special kind of deformity whereby the venereal act is rendered unbecoming’ (Aquinas, 1920: Part II of Part II, Q154, §11).

From these various references, it will be clear to the reader that the sodomite had no place in the City of God. The practising sodomite being a dangerous sinner, it is necessary to cast him out of the society of Christians. It was widely thought that the divine prohibition against sodomy was grounded on ‘practical’ reasons: sodomy is unnatural and unprocreative (Borrillo, 2001: 57). To this should be added that sodomy implies a reversal or a confusion of the roles, the passive male partner playing the part usually devoted to the woman as the passive ‘object’ of the penetration (Tamagne, 2001: 9).

The religious basis for the repression of homosexuality having been laid out, I will now proceed to study its legal repression in England, which began in 1533 the year after Henry

VIII broke with Rome. The legal basis for the prosecution of sodomy in Britain, the Buggery Act 1533, remained in force until 1861 (except during the short period of the reign of Mary I Stuart). To fully understand the consequences of this law, it is necessary to examine the context in which the Buggery Act was passed. It is then necessary to go back in time to study its consequences.

### **Legal basis for the repression of sodomy**

Henry VIII's break with Rome, which effectively occurred in 1534 with the passing of the Act of Supremacy, was preceded by various episodes, notably the 1532 submission of the clergy and the Act in Conditional Restraint of Annates, and, the following year, the Act in Restraint of Appeals (with effect from January 1534) which forbade appeals from English church courts to Rome and which at the time seemed to precede the total abolition of canon law and the church courts empowered to administer it (Baker, 2002: 130-131). Eventually, the old ecclesiastical legal apparatus was allowed to continue in existence alongside the civil (that is, lay) jurisdictions, 'except where it was contrary to the common or statute law or the king's prerogative' (Baker, 2002: 131).

It is in this context that the passage of the Buggery Act 1533 must be understood since the King was anxious to take as much power away from the Church as he could, and such a law ensured that cases of sodomy would from then on be exclusively judged by civil courts. Until then, it should be noted, only canon law punished sodomy, as it was never a common law offence in England (Baker, 2002: 531). Prosecutions for buggery were rare in Early Modern England, and the penalties imposed by ecclesiastical courts on convicted sodomites were usually very lenient (Greenberg, 1988: 303).

The Buggery Act was a particularly harsh law, as was most of the Tudor criminal legislation. After having denounced the 'detestable and abominable Vice of Buggery committed with mankind or beast', the statute laid down the sentence: 'such pains of death and losses and penalties of their good chattels debts lands tenements and hereditaments as felons do according to the Common Laws of this Realme'.

The religious and legal bases for the prosecution of sodomy having been now laid out, we will see the different stages through which the apprehension of sodomy by the State was to go through.

## II. 'Their blood shall be upon them': The Repression of Sodomy

### The Buggery Act as a purely political tool

For most of the period between 1533 and the Glorious Revolution, convictions for buggery remained exceptional. By 1641, only three people had been convicted of buggery: Lord Walter Hungerford in 1540, Mervyn Tuchet, 2nd Earl of Castlehaven, in 1631 and, nine years later, the Church of Ireland Bishop of Waterford & Lismore John Atherton. The latter is a good example of the political use of the Buggery Act: he was hanged for adultery, fornication and buggery, but it is now judged highly probable that he 'was the victim of revenge for his successful recovery of church lands' from the 1st Earl of Cork (*Oxford Dictionary of National Biography*, 2004: 2-811). In all three cases, the Buggery Act had been invoked in the course of politically motivated cases, where discrediting the defendant could be useful to the powers that be. The exceptional character of the prosecution of buggers is confirmed by a study of assizes and quarter-sessions indictments in Essex between 1620 and 1680: out of the 8,557 cases, only one was for buggery, dropped for lack of evidence. The situation was very similar in Kent, Sussex and Hertfordshire during an earlier period (1559-1625) (Greenberg, 1988: 326).

The 150 years after the passage of the Buggery Act could then seem to validate the theory that there was no political desire to root out or to fight sodomy, since in the only three condemnations for buggery during this time the accusation was very probably or certainly used as a means to further discredit men it was deemed urgent to suppress by any means possible for religious or political reasons. We find here one of the four reasons behind the almost universal repression of buggery in Europe at the time listed by Dr Flora Leroy-Forgeot in 1997: 'political opportunism (...) which can be summed up in the syllogism: "The sodomite is the worst kind of criminal, the enemy of my group is the worst kind of criminal, so the enemy of my group is a sodomite"' (Leroy-Forgeot, 1997: 22).

The decades following the Glorious Revolution were however marked by a shift in the repression of sodomy, which I will now study.

## **New representations and heightened repression**

The last years of the XVIIth century witnessed a turning point in the history of sodomy as an anti-social behaviour since it began to be fought *per se*, and quite harshly so. There are two main reasons for such a change: first, the appeasement of the religious quarrels and fears which had characterised the XVIth and XVIIth centuries allowed the public and the political leaders to turn their attention to threats less serious than popery, political sedition or witchcraft (Greenberg, 1988: 328-329); second, the creation, from the 1690s, of Societies for the Reformation of Manners, religious societies which prosecuted blasphemers, prostitutes, pornographers and buggers (Trumbach, 1977: 11).

It should be noted that, in the absence of a professional police force, it was extremely difficult to find evidences of an offence usually committed in private by two consenting persons. All the more so since the case law imposed very stringent conditions for establishing the offence of buggery: evidence had to be brought of actual penetration and emission of semen, something which was rarely feasible (Gilbert, 1976: 73). The Societies for the Reformation of Manners conducted raids on 'molly houses', these places of gatherings for men interested in homosexual intercourses and/or in transvestism. The London Society alone was responsible for 90,000 arrests between 1692 and 1725 (which means an average of more than seven arrests per day) (Greenberg, 1988: 329). The judicial repression was however quite lenient, when one bears in mind that sodomy was a capital offence, and judges usually sentenced to a small fine and a few hours in the pillory for attempted sodomy (since the actual offence was very difficult to prove). Although the pillory was the lightest penalty a judge could impose, such a sentence could have grave consequences for the defendant: in addition to the public humiliation of being thus exposed, mobs were not infrequently known to pelt pilloried offenders with eggs or even stones (Greenberg, 1988: 339), especially when the condemned person had been convicted of a sodomy-related offence, with one such death recorded in London (Trumbach, 1977: 21).

An element could explain the sudden new intensity of the repression of buggery: the perception of sodomy as a sexual deviance (as opposed to a political or religious one) had undergone a change by the end of the XVIIth century. The idea became prevalent in Britain that sodomy was gaining ground, and that buggers were more and more numerous. What we would now call 'homosexuality' was all the more threatening that sodomy was more and



more associated with a particular class of men, usually effeminate, who liked to meet in the molly houses mentioned above to have sexual relations and shunned the society of women (Tamagne, 2001: 59), thus confirming the abnormality of sodomites who naturally were seen as a danger to family, the basis of society.<sup>3</sup>

This new perception of sodomy has a direct relation with the object of this chapter: the political, moral and religious arguments against sodomy, without disappearing, were superseded by rationalist and ‘hygienist’ arguments presenting buggery as a cancer and a hidden threat, as well as a social disorder which needed to be regulated for the benefit of society (Tamagne, 2001: 71-72). Of particular importance seems to have been the realization that sodomy was not limited to the aristocracy or the upper class: ‘Vice and scandal worried the British authorities then because they were perceived for the first time to be endemic rather than merely courtly, aristocratic, or – still worse – foreign’ (Rousseau, 1987: 133).

However, this new perception was accompanied by a contrary intellectual trend which called for the decriminalization of sodomy, not because of its innocuousness or its acceptability, but because of a new conception of what Law could and could not regulate. Thus, in France, Diderot privately wrote in 1769 that ‘everything that is cannot be against nature, nor outside nature’ (*‘tout ce qui est ne peut être ni contre nature ni hors de nature’*) (Diderot, 1951: 940), thus refuting a traditional argument against sodomy. The idea also began to appear that the moral transgression of sodomy belonged to the fields of sin and thus to canon law, but not to civil law (Leroy-Forgeot, 1997: 50-51). Likewise, in his *Essay on Pæderasty* (written in 1785 but not published until 1931), Jeremy Bentham, although also reproving sodomy, notes that he cannot find any reason justifying the criminalization of ‘offences against one’s self’ (Bentham, 2002: 10).

These contradictory trends – sodomy still seen as dangerously deviant and needing to be eliminated for the welfare of the Commonwealth, while at the same time conceived as something pertaining to the realm of morals and not necessarily of Law – finally led to a paradoxical state of mind where sodomy was allowed to be publicly ignored and taboo but could occasionally be harshly punished if too visible.

---

<sup>3</sup> It is from this period that we can date the stereotype ‘that if a man were married, he could not be a sodomite. Some men at their trials attempted (...) to disprove the charge of sodomy by producing a wife, a father-in-law or a child’ (Trumbach, 1977: 15).

### III. 'May I not speak, my Lord?': the sodomites' right to be silenced

#### Sodomy as a symptom of mental illness

In October 1884, the famous psychiatrist Dr George Savage MD described in the *Journal of Mental Science* a female patient with a 'powerful lust towards those of her own sex' and wondered if 'this perversion is as rare as it appears' (Weeks, 1990: 28). Dr Savage was not an exception, and cases of homosexuality recorded in medical journals of the time were often treated 'as if a new type of human being had been discovered' (Weeks, 1990: 28). In a trend consistent with the 'hygienist' view of the sodomite I mentioned when discussing the XVIIIth century, homosexuality was then often seen as a mental illness and, as such, cases were usually mentioned in the context of prisons or lunatic asylums. Havelock Ellis claimed that he had been the first to record homosexual cases unconnected with such backgrounds (Weeks, 1990: 28) and he was most probably right. However, he too, in his seminal *Sexual Inversion* (1897), co-written with John Addington Symonds, asserted a link between 'sexual inversion' and mental problems:

The sexual invert is specially liable to suffer from a high degree of neurasthenia, often involving much nervous weakness and irritability, loss of self-control and genital hyperæsthesia [i.e. an abnormally high sensitivity to stimuli of the senses]. This is a condition which may be ameliorated, and it may be treated in much the same way as if no inversion existed (...). The inversion is not thus removed (Ellis & Symonds, 1970: 144).

This change of perspective has been aptly described by Randolph Trumbach: 'Beginning in the late 19th century it was no longer the act that was stigmatised, but the state of mind. Men were no longer sodomites but homosexuals, though they were still seen as effeminate and dangerous – no longer heretics but sexual perverts' (Trumbach, 1977: 9). Not that this change of perspective was unwelcome by Victorian and Edwardian society: 'Madness was the only explanation which did not undermine the middle-class norm' (Weeks, 1990: 28). And in this middle-class norm, sodomy could not exist; it had to be pushed into the shadow where it could be safely ignored, and starkly punished if it ever came out.

## **Shadow men**

The thinkers I mentioned in the previous part provided the rationale for a continuing reprobation of sodomy while at the same time keeping its repression low on the official agenda. Buggery was still seen as a threat but it appeared more urgent to conceal it from view and to ignore it than to punish it, since punishment put the transgression in plain sight.

A marking feature in the history of sodomy in the XIXth century is the fact that the legal penalties appeared to be more and more lenient: in 1816, the Pillory Abolition Act restricted the use of this punishment to the offence of perjury, and, in 1837, the pillory was abolished altogether. As for the offence of buggery itself, it stopped being a capital offence in 1861 when the Offences against the Person Act abolished the Buggery Act and made the ‘abominable Crime of Sodomy and Buggery’ liable of a prison sentence comprised between ten years and life (§ 61). As for the attempt, which could only be committed on a male person, was punishable by either from three to ten years of penal servitude or by at most two years in prison (with or without hard labour) (§ 62).

However, as a corollary, repression was allowed to become more systematic: the penalty for actual sodomy was less harsh, but the necessity to prove the emission of seed to constitute the offence was removed by § 63 of the 1861 Act. At the same time, the penalty was actually harsher for attempted sodomy, that is to say the offence which sodomites were usually found guilty of. The final touch was put in 1885 when the ‘Labouchère Amendment’ (after the Liberal MP Henry Labouchère (1831-1912) who moved it), Section 11 of the Criminal Law Amendment Act created the offence of ‘gross indecency’ committed by a male person upon another male person. The misdemeanour was not further defined, which allowed for the prosecution of virtually any homosexual act when actual sodomy could not be proved. It was punishable of at most two years, with or without hard labour. The fact that the offence was not even defined is representative of the hidden status of deviant sexuality (indeed of all sexuality) under the Victorian era, as was the 1896 Publication of Indecent Evidence Bill defended by the then Lord Chancellor, the 1<sup>st</sup> Earl of Halsbury, and supported by the Conservative Prime Minister, the 3<sup>rd</sup> Marquess of Salisbury, which, if adopted, would have forbidden the press from reporting on trials dealing with homosexuality (Tamagne, 2000: 29).

Such laws or bills were also representative of an urge to fight all types of perversions, be they feminine or masculine: the Criminal Law Amendment Act 1885 as a whole was designed to repress female prostitution and sexual abuses directed at young girls (Weeks,

1990: 16-20). The target of this 'purity campaign' was male lust, which was felt by many to be the ultimate root of many disorders in society (Weeks, 1990: 16). Thus, in 1895, W. T. Stead called for the law to protect the young girls sexually exploited by unscrupulous men as strictly as it had 'protected' young men from Oscar Wilde's unnatural lifestyle (Foldy, 1997: 129-130).

The paradoxes of the second type of public attitude towards sodomy – buggery becomes invisible and legal penalties are even toned down but repression quietly continues – were to become obvious to all in 1895 when Oscar Wilde decided to prosecute the 9th Marquess of Queensberry.

### **The Wilde trials: backlash and watershed**

It may well be true that Oscar Wilde is the homosexual who is most famous for being homosexual. It is at least true that his fall from grace in the 1890s has made him an eminently tragic figure and an enduring symbol of the repression of homosexuality. Not that he achieved that status at the time, nor even in the following decades. The prevalent opinion in the 1890s was rather that the Establishment had allowed the corruption of one of its most brilliant members to go unchecked and that his punishment had long been overdue. The desire to obliterate Wilde from the national conscience can find a symbol in Wilde's last, unanswered apostrophe to his judge after the sentence had been pronounced: 'And I, may I not speak, my Lord?' (Foldy, 1997: 47)

In February 1895, desirous to put an end to the 40-year-old Oscar Wilde's affair with his 25-year-old son, Lord Alfred Douglas, the Marquess of Queensberry left his calling card at Wilde's club with the inscription 'For Oscar Wilde, posing as a sodomite [sic]'. Being thus accused of a criminal offence, Wilde decided to prosecute the aristocrat for libel. The Marquess's defending team then set out to prove that the statement was true and that it had been made for the public benefit (Foldy, 1997: 1).

What the public benefit was can be summed up in this way: 'Wilde had been proved to have been associating with disreputable young men who were not his coequals in either age or station' (Foldy, 1997: 19) and had exercised a 'corrupting influence' on a young man. Much to Oscar Wilde's surprise, the defense team claimed they were able to call to the bar a number of young men, often of very low degree, to prove that the writer had indeed had sexual relations with other men. The deviant, anti-social character of Oscar Wilde's lifestyle was

there, in his breaking twice the norms of Victorian England: first, by having ‘unnatural’ sexual intercourses, and, second, by breaking the class barrier.

Confronted to a backlash which he had strangely not foreseen, Wilde dropped his prosecution in April but was in turn immediately prosecuted for ‘acts of gross indecency’ under the Labouchère Amendment. After the jury of the first trial was unable to reach a verdict, he was again tried for the same offence. The fact that the prosecution in the latter trial was led by the Solicitor General, Sir Frank Lockwood MP, leaves no doubt about the importance of the trial in the eyes of the then Liberal Government (Holland, 2003: xxxiii-xxxiv).

Wilde’s sentence of two years of hard labour, and his subsequent life – which saw him survive three years as a social outcast, a broken and a bankrupt man – may well have been seen by some contemporaries as a cautionary tale. There is indeed no doubt that Wilde and his ‘vice’ were very widely seen as anti-social, as a threat to the Victorian society. The trial and its outcome were often described using hygienist words: thus, addressing the jury, the first prosecutor, Charles Gill, told them they ‘owe[d] a duty to society (...) to protect society from such scandals by removing from its heart a sore which cannot fail in time to corrupt and taint it all’ (Foldy, 1997: 37). During the second trial, anticipating the widely-expected verdict of guilt on Wilde’s part, *The Daily Telegraph* described the moral condemnation British society would bestow on Wilde as ‘the indirect sentence which eliminates him from the society he has disgraced’ (Foldy, 1997: 54).

However, and paradoxically, the trials of Oscar Wilde were in retrospect the prelude to a more positive public view of sodomy and homosexuality: one which was to lead political leaders to push for the acceptance of homosexuals.

#### **IV. ‘They have to have a gay world’: Tolerance and acceptance (?)**

According to Havelock Ellis,

The Oscar Wilde trial with its wide publicity and the fundamental nature of the questions it suggested appears to have generally contributed to give definiteness and self-consciousness to the manifestations of homosexuality, and have aroused converts to take up a definite stand (Weeks, 1990: 22).

However, the decades following Oscar Wilde’s trials did not immediately show a change in the vision British society had of sodomites. Even if homosexuals started to organize

(Weeks, 1990: 133), British society was not ready to approve of sodomy until at least the 1960s (Weeks, 1990: 158).

Some individuals, such as Edward Carpenter (1844-1929), and organizations such as the British Society for the Study of Sex Psychology or the Sex Education Society attempted to change the public view of homosexuality (Weeks, 1990: 133) through learned articles or books. A constant of these endeavours was to try to better understand the mechanisms of human sexuality and sexual attractions, taking a “‘scientific’ (that is, humane and rational) approach to the problems of sex’ (Weeks, 1990: 133). A cliché in the literature of the time, from the middle of the XIXth century, being to assimilate homosexuality and narcissism, some tried to compile list of homosexuals of the past having been useful socially (Tamagne, 2001: 97). Thus, in *The Intermediate Sex* (1908), Edward Carpenter shows that ‘Uranians’ constituted a positive force for the Nation, and he underlined their role as artists, teachers or inventors (Carpenter, 1908: 60-64). However, such works and lists remained essentially confidential and had no impact on the repression of homosexual offences, which intensified and became more systematic in the interwar period (Tamagne, 2000: 457), with the trend continuing after the Second World War (Weeks, 1990: 159). There can be no doubt there was a conscious desire to fight sodomy in the latter period, when the Conservative Home Secretary Sir David Maxwell-Fyfe declared in the Commons in 1953 that ‘homosexuals in general are exhibitionists and proselytisers and are a danger to others, especially the young’ (Weeks, 1990: 159).

The change in perspective concerning sodomy was essentially due to a change in society as a whole. What Geoffrey Weeks has called the ‘new hedonism’ of the 1960s (Weeks, 1990: 158), with its emphasis on sexual pleasure, made the situation of homosexuals appear strange since they were officially denied the right to experience it. Already, in 1957, the special committee on homosexual offences and prostitution chaired by Sir John Wolfenden had recommended the decriminalization of consented homosexual acts carried out in private between two adults. This recommendation, which, the committee stressed, was not to be seen as countenancing sodomy (Wolfenden, 1963: 45 & 48), was based essentially on an argument we have already encountered: ‘Unless a deliberate attempt is made by society, acting through the agency of the law, to equate the sphere of crime with that of sin, there must remain a realm of private morality and immorality which is, in brief and crude terms, not the law’s business’ (Wolfenden, 1963: 48).

Generally, the committee took it as a line that homosexual acts were to be treated just like heterosexual acts (Wolfenden, 1963: 49). They claimed they were able, after careful scrutiny, to dismiss most of the arguments usually given for defending the criminalization of sodomy: it was no more dangerous for family life than other sexual behaviours such as ‘adultery, fornication or lesbian behavior’ that were not criminalized (Wolfenden, 1963: 44-45) and homosexuality was not a disease (Wolfenden, 1963: 44-45). Far from being a danger to society, homosexuality could even be, for some, ‘the motivation for activities of the greatest value to society’ (Wolfenden, 1963: 30).

The report’s recommendations on homosexuality were nonetheless not translated into law. The decriminalization of buggery (and other homosexual offences) had to wait until 1967, essentially thanks to the stubbornness of a Labour backbencher, Leo Abse, who introduced a Private Member’s Bill eventually adopted by Parliament in July 1967. The Labour government of Harold Wilson discreetly supported the Bill, but made no effort to help its sponsor pass it, except by giving Leo Abse as much Parliamentary time for the debate as he judged adequate (Abse, 1973: 152). It should be noted that no Church or organization officially opposed the Bill (Weeks, 1990: 175), so true was it that ‘[b]y 1967, the heat had largely been dissipated from the question’ (Weeks, 1990: 156).

This new tolerance was nonetheless fraught with ambiguities, and the 1967 law proved an ambiguous landmark. No homosexual group was consulted by Leo Abse (Weeks, 1990: 176), who, as a result, accepted a number of compromises for tactical reasons (Abse, 1973: 156-157), notably excepting the Armed Forces and the Merchant Navy from the provisions of the Act, thus giving credence to the idea that sodomites were a danger to the Armed Forces and to the Country they were to protect. Abse also confessed in his memoirs (published in 1973) that, in order for his Bill to be adopted,

homosexuals had to be placed at a distance, suffering a distinctive and terrible fate so different from that enjoyed by Honourable Members blessed with normality children and the joys of a secure family life. To hint that the homosexual component in a man’s nature plays a large part in helping him understand and thus form a deep relationship with a woman, would have aroused discomfort (Abse, 1973: 153).

However, imperfect as the law was, the Private Member’s Bill effectively freed homosexuals from the fear of prosecution in England. The 1967 turning point introduced an era where, as the Wolfenden committee had expressed the hope, the State decided that it was none of its business to inquire what two people had consensually decided to do, however

disturbing it could have appeared to outsiders. Buggery was decriminalized (with the same exceptions as in England) in Scotland by the Criminal Justice (Scotland) Act 1980, and in Northern Ireland by The Homosexual Offences (Northern Ireland) Order 1982.

In 1994, during the discussion of the Criminal Justice and Public Order Act, when the Government proposed to extend to members of the Armed forces and of the Merchant Navy the benefit of the laws decriminalizing buggery, it did not meet any opposition from MPs (Parliamentary Debates, 1994: 169-172).

## **Conclusion**

With the disappearance of the offence of buggery, this article necessarily concludes, although the last word is not said when it comes to the broader subject of homophobia or anti-gay discrimination. However, my object was not to write a history of LGBT rights in England and Wales, but to trace the history of buggery/sodomy as a deviance.

The adoption of the 1967 law, or of the 1994 law, did not of course mean that homosexuality was deemed acceptable by the British people, or even by a majority of them. In 2007, the 90-year-old Leo Abse<sup>4</sup> deeply disturbed gay novelist Geraldine Bedell when he observed while she interviewed him:

Those of us putting the bill through thought that, by ending criminality, we'd get the gays to integrate. But I was disconcerted and frightened at first because they were coming out and turning themselves into a self-created ghetto. (...) The ghetto suggests they are not at ease. They've got to have a gay world. (Bedell, 2007).

G. Bedell, however angry at the former MP's comments, nonetheless noted that, 'terribly flawed (...) mealy-mouthed, half-hearted, embarrassed by itself as it was, the [1967] act made possible the equality that has since been so painstakingly fought for' (Bedell, 2007). One cannot deny that it was a necessary step towards making homosexuals more visible and 'acceptable'. The debates around 'gay marriage' which took place in 2013 are for that matter a reminder of how much the cause of homosexuality has gone, but also the proof of how much remains to be done for 'buggers' to be considered full-fledged members of British society. No more and no less.

---

<sup>4</sup> The reader will not be surprised to know that, in his memoirs, Leo Abse takes great pains to point out that he was not homosexual.



## References

Aquinas, Thomas, St. ([1266-1279] 1920-1929). *The Summa Theologica of St. Thomas Aquinas*. Translated by Fathers of the English Dominican Province. Accessed 28 January 2013.

<http://www.newadvent.org/summa/3154.htm/>.

Augustine of Hippo, St. ([399-400] 1955). *Confessions*. Edited and translated by Albert C. Outler. Christian Classics Ethereal Library. Accessed 28 January 2013.

<http://www.ccel.org/ccel/augustine/confessions.pdf/>.

Baker, John Hamilton. ([1971] 2002). *An Introduction to English Legal History*. Londres: Butterworths.

Bedell, Geraldine. (2007). "Coming out of the dark ages". *The Observer*, 24 June. Accessed 28 January 2013.

<http://www.guardian.co.uk/society/2007/jun/24/communities.gayrights>.

Bentham, Jeremy. ([1931] 2002). *Essay on Pæderasty*. Edited by Louis Crompton. Lille: Question de genre/GKC.

Borrillo, Daniel. ([2000] 2001). *L'Homophobie*. Paris: Presses universitaires de France.

Carpenter, Edward. ([1908] 2007). *The Intermediate Sex – A Study of Some Transitional Types of Men and Women*. Fairford: Echo Library.

Diderot, Denis. ([1830] 1951). "Suite de l'Entretien [avec d'Alembert]". In *Œuvres*. Edited by André Billy. Paris: Gallimard

Ellis, Havelock & Symonds, John Addington. ([1897] 1970). *Sexual Inversion*. New York City: Arno Press.

Fleming, Ian. ([1957] 2006). *From Russia with Love*. London: Penguin Books.

Foldy, Michael S.. (1997). *The Trials of Oscar Wilde: Deviance, Morality, and Late-Victorian Society*. London & New Haven, CT: Yale University Press.

Franceschina, John. (1997). *Homosexualities in the English Theatre – From Lyly to Wilde*. London: Greenwood Press.

Gilbert, Arthur N.. (1976). “Buggery and the British Navy, 1700-1861”. *Journal of Social History*. 10-1: 72-98.

Greenberg, David F.. (1988). *The Construction of Homosexuality*. Chicago: The University of Chicago Press.

Holland, Merlin. (2003). *Irish Peacock & Scarlet Marquess – The Real Trial of Oscar Wilde*. London: Fourth Estate.

Leroy-Forgeot, Flora. (1997). *Histoire juridique de l’homosexualité en Europe*. Paris: Presses universitaires de France.

*Oxford Dictionary of National Biography*. (2004). Edited by Brian Harrison & Henry C. G. Matthew. Oxford: Oxford University Press.

*Oxford English Dictionary (The)*. ([1928] 1989). Edited by John Andrew Simpson & Edmund S. C Weiner. Oxford: Clarendon Press.

*Parliamentary Debates*. (1994). House of Commons. (12 April 1994). Vol. 241.

Rousseau, George Sebastian. (1987) “The Pursuit of Homosexuality in the Eighteenth Century: ‘Utterly Confused Category’ and/or Rich Repository?”. In *‘Tis Nature’s Fault, Unauthorized Sexuality during the Enlightenment*, edited by Robert Purks Maccubin, 132-168. Cambridge: Cambridge University Press.

Tamagne, Florence. (2000). *Histoire de l’homosexualité en Europe – Berlin, Londres, Paris 1919-1939*. Paris: Éditions du Seuil.

Tamagne, Florence. (2001). *Mauvais genre ? Une histoire des représentations de l'homosexualité*. Paris: Éditions de la Martinière.

Trumbach, Randolph. (1977). "London's Sodomites: Homosexual Behavior and Western Culture in the 18th century". *Journal of Social History*. 11-1: 1-33.

Trumbach, Randolph. (1987). "Sodomitical Subcultures, Sodomitical Roles, and the Gender Revolution of the Eighteenth Century: The Recent Historiography". In *'Tis Nature's Fault, Unauthorized Sexuality during the Enlightenment*, edited by Robert Purks Maccubin, 109-121. Cambridge: Cambridge University Press.

Weeks, Jeffrey. ([1977] 1990). *Coming Out: Homosexual Politics in Britain from the Nineteenth Century to the Present*. London & New York City: Quartet Books Ltd.

Wolfenden, Sir John (ed.). ([1957] 1963). *The Wolfenden Report – Report of the Committee on Homosexual Offences and Prostitution*. New York City: Stein & Day.